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UNCLAS MANAGUA 000411

SIPDIS

SENSITIVE
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STATE FOR LIBRARY OF CONGRESS COPYRIGHT OFFICE, COMMERCE FOR USPTO

E.O. 12958: N/A
TAGS: [KIPR](#) [ECON](#) [ETRD](#) [NU](#)
SUBJECT: INFORMATION FOR NICARAGUA SPECIAL 301 REVIEW

REF: STATE 14937

¶1. (SBU) Summary. Nicaragua is not currently placed on any Special 301 list, and post recommends maintaining this status. This recommendation is offered in spite of the fact that there remains room for improvement on legal structure and judicial attitudes, and that the Dole Food Company has written to the USTR requesting Nicaragua's placement on the Priority Watch List due to the "seizure" of Dole's trademark by a Nicaraguan court. Nevertheless, the Government of Nicaragua (GON) has taken several encouraging actions in the last year which improve upon the areas of weakness. Authorities have conducted several enforcement actions, participated in high-level, USG-sponsored enforcement training academies, sponsored their own large-scale IP workshops, and worked diligently with Embassy personnel on changing the culture of piracy. Furthermore, Nicaragua is a party to DR-CAFTA and post remains cautiously optimistic that a range of intellectual property rights reforms (necessary for DR-CAFTA entry into force) will be passed shortly. All of these factors lead post to believe that the IPR climate will continue to improve. End Summary.

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Legal Framework
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¶2. (U) Since 2000, Nicaragua has modernized its domestic IP laws and signed several major international conventions. Five international agreements entered into force in Nicaragua in 2003:

- The Locarno Agreement on International Classification of Designs and Industrial Models;
- The Strasbourg Agreement on International Classification of Patents;
- The World Intellectual Property Organization (WIPO) Copyright Treaty;
- The WIPO Performances and Phonograms Treaty (WPPT); and
- The Patent Cooperation Treaty (PCT).

Additionally, Nicaragua ratified the Dominican Republic - Central America Free Trade Agreement in 2005. The Intellectual Property Registry (RPI) of the Ministry of Industry, Commerce and Development (MIFIC) has worked closely with the USTR in recent months to harmonize the new CAFTA-related IPR obligations with existing national laws and regulations, and agreed on language required for new IPR reforms which have been added to the Nicaraguan National Assembly's agenda and are expected to be voted on in the near future as a condition for DR-CAFTA entry into force.
(Comment: Post remains cautiously optimistic that these reforms will pass and is working cooperatively with the GON

and legislative and private sector allies to promote their passage. End Comment.)

13. (SBU) Although Nicaragua possesses a solid legal framework for the protection of intellectual property rights, a lack of strong penalties for violations, inadequate implementation of existing law, and ineffective enforcement remain areas of concern. Nicaragua suffers from weak institutions due to a lack of resources and susceptibility to official corruption. Additionally, the legal system suffers from a general lack of knowledge of the subject matter, and a judiciary which is open to improper outside influence. Regardless, both the National Prosecutor and the Nicaraguan National Police (NNP) Economic Crimes Unit have demonstrated an interest in IPR and have expressed a desire to work with the affected industry representatives to crack down on piracy. (Note: The bulk of reported IPR related violations in Nicaragua involve pirated movies and music CDs. End Note.)

Training and GON Institutional Support for Intellectual Property Rights

14. (SBU) The National Intellectual Property Rights Office and Intellectual Property Registry (RPI), which are sub-units of the Ministry of Trade (MIFIC), have increased efforts to train judges, prosecutors, police and GON officials in implementation and enforcement of IPR commitments. In the past year, RPI sponsored nine seminars in various regions of the country, which trained over 600 Government, law enforcement, prosecution, and judicial officials in various aspects of IPR enforcement. Several high-level RPI and NNP Economic Crimes Unit personnel also participated in two IPR enforcement academies in the United States sponsored by the U.S. Patent and Trademark Office. Post is nominating additional candidates for a USPTO enforcement academy in April that includes Spanish-language translation. The National IPR Office also prepared IP guides for children, which it is distributing in schools, and published three editions of an electronic IP magazine.

15. (SBU) RPI initiated several institutional reforms over the last two years. In the area of industrial property, the national patent office has upgraded its capacity to handle international requests per the Patent Cooperation Treaty. In 2005, RPI also strengthened the protection of new plant varieties in Nicaragua under the International Union for the Protection of New Varieties of Plants (UPOV) Convention. Nicaragua is a leader in the region in the implementation of the UPOV Convention. RPI assisted over 1,800 students, attorneys, and business people who used its trademark registry for research and due diligence checks. 3,896 new trademarks were registered in the last year. As of February 2006, 41% of the trademark data base has been digitalized. RPI expects the percentage to rise to 59% in 2006-2007. The GON acted to adhere to the conditions of the Budapest Treaty, recognizing the International Deposit of Microorganisms, and has instituted inter-institutional coordination for the protection of test data. On the international front, Nicaragua actively supports U.S. proposals on geographic indicators (GI) and is strongly against anti-competitive EU GI proposals in the WTO. Nicaragua favors the U.S. position on a revised Trademark Law Treaty in the March 2006 WIPO Diplomatic Conference in Singapore and supported U.S. proposals at the July 2005 WIPO Diplomatic Conference on the Protection of Broadcasting Organizations in Cartagena.

16. (U) MIFIC worked closely with the private sector to develop the pro-IPR Nicaraguan Copyright Association (NICAUTOR) which is actively involved in a public and legislative campaign to pass IPR reforms and foster a culture of respect for intellectual property. NICAUTOR has also been active in conducting research on behalf of, and providing critical support to, the NNP Economic Crimes Unit. Most recently, NICAUTOR (with substantial ECON support and a \$2,000 USAID grant) has organized a publicity campaign by a coalition of Nicaraguan musicians, concert promoters, video production companies, and legal importers of videos and

movies to raise public awareness of the economic and cultural cost of piracy, to promote respect for intellectual property and to support the pending IP reforms. Recognizing the threat to Nicaragua's international commitments, including those involving intellectual property, the GON reacted aggressively to prevent passage of anti-GMO "biosecurity" legislation in 2005.

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Enforcement
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17. (U) MIFIC, the National Prosecutor, the NNP Economic Crimes Unit, and private industry (including NICAUTOR) have worked together on several large enforcement actions over the past year. As a result of raids on outlets selling pirated goods, 13 thousand cassettes, 19 thousand CDs, and several pieces of equipment for making illegal copies of music and movies were seized and destroyed. These raids against nine establishments and vendors in Nicaragua's largest open air market took place between March 2005 and January 2006. These actions were given high profile attention by Nicaraguan media. (Note: Due to the weakness of the current law, authorities could only seize the contraband items. They could not prosecute the makers and sellers of pirated goods. This weakness is addressed in pending IP reform legislation. End Note.) The National IPR Office also facilitated the non-judicial resolution of at least twelve cases involving IP infringements on music, software, photographs, videos and other works. (Comment: Despite the successful enforcement measures noted above, additional action needs to be taken against the sale of pirated goods in "reputable" establishments. End Comment).

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THE DOLE COMPLAINT
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18. (SBU) Dole Food Company comments to the USTR highlight the serious issue of an assault on the intellectual property rights of a U.S. corporation by the Nicaraguan courts. The basis of Dole's complaint is a judge's order to "embargo" and auction Dole's Nicaraguan trademark in order to enforce judgments against Dole in cases arising under Nicaragua Law 364. Law 364, enacted in 2001, established special procedures for claimants alleging injury from the use of Dibromochloropropane (DBCP)-based pesticides in the 1970,s and (allegedly) 1980,s. Under Law 364, Dole has been subjected to judgments in 16 Nicaraguan cases involving 959 claimants which total \$885.9 million. In the U.S. and Nicaragua, Dole is involved in current cases with claimed damages of approximately \$22 billion. Dole argues that the Nicaraguan court ordered the attachment of Dole's trademarks "because the Nicaraguan plaintiffs and their U.S. lawyers have been unable to find a court anywhere in the hemisphere that would enforce the judgments issued by the Nicaraguan courts..." (Note: Dole no longer has any business operations or other attachable assets in Nicaragua, although there are vendors who buy Dole products abroad and import them to Nicaragua for re-sale. End note.)

19. (SBU) Comment on the Dole Complaint: Dole Food Company raises legitimate concerns, but we do not believe that this case warrants Nicaragua's placement on the Priority Watch List. The USG has continuously and strenuously objected to Law 364 and subsequent actions taken by the Nicaraguan legal system which wrongly damage Dole's interests. We expect continuing attention from the highest levels to remedy the unjust treatment of Dole and other U.S. companies, which is detrimental to Nicaragua's aspirations for increased foreign investment and economic stability. Reform of the Nicaraguan legal system also remains a core mission objective. The GON view is that this trademark issue is only tangentially related to broader IPR concerns, and it is not fair to punish Nicaragua for the actions of the courts in light of progress made on a host of other fronts. (Note: The Nicaraguan courts are notoriously hostile to executive branch interests. End Note.) We understand the Dole comments were the only

negative comments about Nicaragua's IPR enforcement received by the USTR.

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RECOMMENDATION
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¶10. (SBU) Post remains concerned about the GON's weakness in both capacity and will to broadly enforce its IPR commitments, as well as the Dole trademark issue; however, we believe that the GON has demonstrated a commitment to strengthening institutional capacity to deal with this issue and has taken a series of concrete actions towards that end. We believe that the GON's actions in 2005 and 2006 described above, and its negotiation of new commitments under DR-CAFTA, are sufficient reasons to maintain Nicaragua's current status under Special 301.
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